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Supreme Court of the United States.

OCTOBER TERM, 1967.

~~No. 291, Misc.~~ No. 702

RONALD L. JOHNSON,
Petitioner,

v.

COMMONWEALTH OF MASSACHUSETTS,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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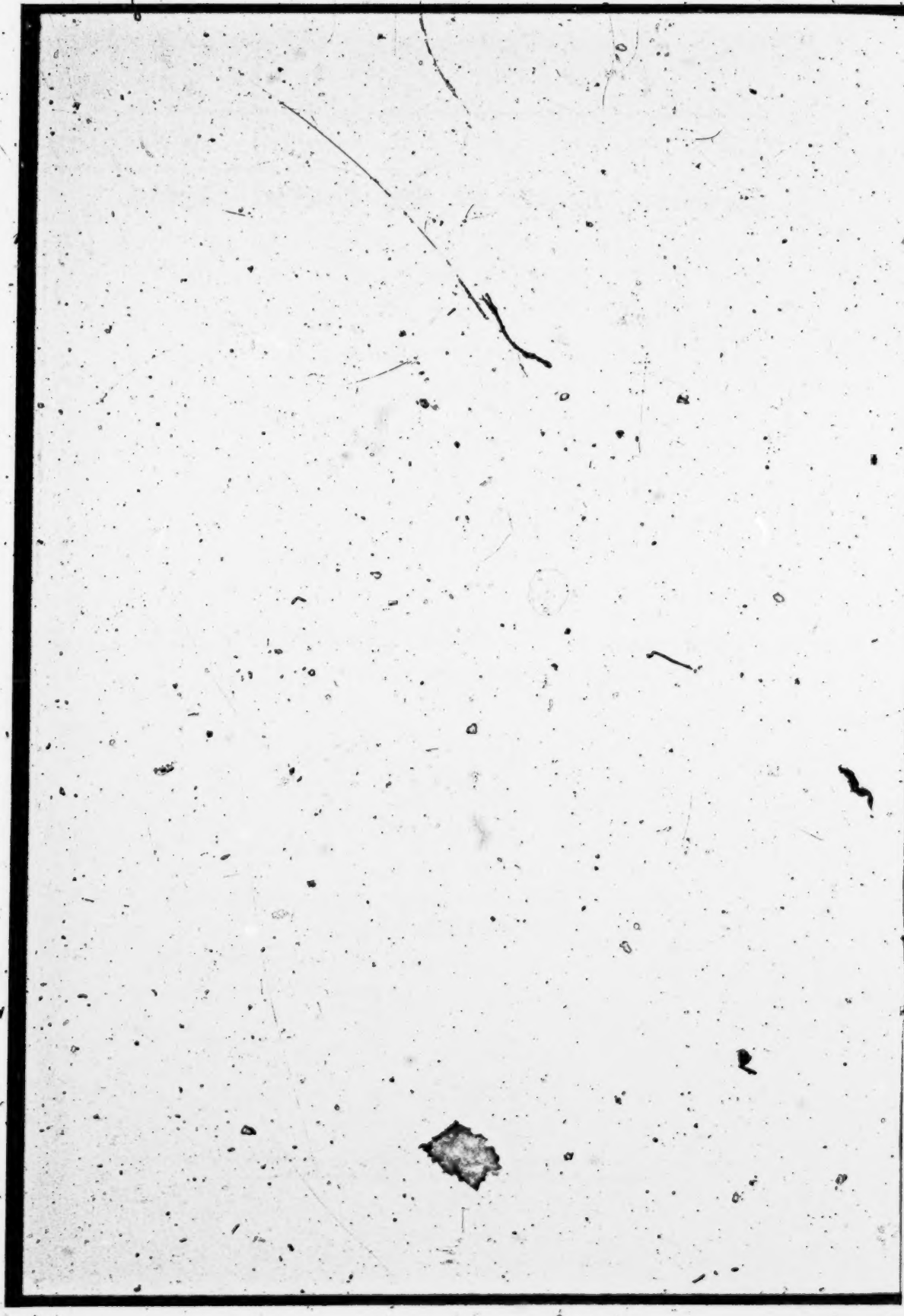

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

Question Presented.

Whether the Massachusetts procedure followed by the courts below respecting admission of confessions violated the petitioner's Fourteenth Amendment rights.

Statement.

The Commonwealth adopts the facts in the statement of the petition, and adds thereto the following:

On the evening of August 1, 1963, immediately before colliding with a bus, the vehicle operated by the petitioner,

Ronald L. Johnson, crashed into a wall (Tr. 586-589) [1] and several automobiles. The impact of his vehicle upon the bus moved the bus several feet (Tr. 667).

After his apprehension Johnson thwarted each attempt by the police to warn him of his rights (N.T. Tr. 110).[2] When asked for his name and address he replied in foul and abusive language that he knew his rights and wasn't going to say anything to the police (N.T. Tr. 119). He asked challenging questions of identifying witnesses during the four police line-ups (R. 26,[3] N.T. Tr. 135, 245 *et seq.*).

Johnson had been a military prison guard in the United States Marine Corps (N.T. Tr. 410). When he refused to sign a statement at the book desk, he declared that he knew his rights (A. 6).[4] On prior occasions he refused to identify himself to police prior to arrest, saying that he was not required to do so (A. 6).

At the trial when the defense rested the judge conferred with counsel regarding arguments and instructions. At this conference there was no mention of the issue of voluntariness, nor was there a request for an instruction regarding it. See *Commonwealth* v. *Johnson,* 1967 Massachusetts Advance Sheets, pp. 581, 585 (B).[5]

Reasons for Not Granting the Writ.

1. The facts certainly do not compel the conclusion that Johnson's confession was not voluntary. He was not a

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[1] "Tr." refers to the typewritten "Transcript of the Evidence."

[2] "N.T. Tr." refers to the "Transcript of the Hearing of Motion for New Trial."

[3] "R." refers to the printed "Summary of Record and Assignment of Errors."

[4] "A" refers to Appendix A of the petition.

[5] "B" refers to Appendix B of the petition.

stranger to the criminal courts or to police procedures relative to persons suspected of crime. The questions which he asked the identifying witnesses show that he had an intelligent appreciation of his predicament. By his words and actions he effectively prevented the police from giving him the warning required by Massachusetts law. From all the circumstances it appears that the factual finding of voluntariness was not improper.

2. The issue of voluntariness is a factual one; the petitioner was given not one, but two, factual hearings on it. If the trial judge in making a decision after the first hearing emphasized the claim of a physical beating, it was because this was the only ground upon which the petitioner objected to the admission of the confession. From the lengthy findings upon the hearing of the motion for new trial it is clear that the judge meticulously considered all the circumstances in determining voluntariness.

The court below, although not bound by Massachusetts law to consider the question of voluntariness, *Commonwealth* v. *Chester,* 337 Mass. 702, 703, nevertheless did so. The Commonwealth relies heavily upon the opinion below in asking that the writ of certiorari not be granted.

3. In questioning the procedure used by Massachusetts in admitting confessions into evidence, the petition cites *Jackson* v. *Denno,* 378 U.S. 368. In that case this Court apparently approved the "Massachusetts procedure" in footnote to pages 378, 379, and 382. The petition relies upon statements in *Miranda* v. *Arizona,* 384 U.S. 436, for the proposition that the prosecution shall carry a heavy burden of proof on the issue of admissibility of a statement made by a defendant. But, as was pointed out in the opinion below, the *Miranda* principle does not apply to this case. See *Johnson* v. *New Jersey,* 384 U.S. 719, 721.

4. The Massachusetts procedure was followed in this case. The jury was free to reject the confession as involuntary. The trial judge was hardly obliged to instruct the jury on this issue where counsel for Johnson apparently did not wish the confession to be emphasized. See *Commonwealth* v. *Johnson, supra,* at pages 584 and 585.

Conclusion.

For the foregoing reasons, the respondent respectfully prays that the petition for a writ of certiorari be denied.

Respectfully submitted,

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Department of the Attorney General,
Commonwealth of Massachusetts.